

BRB No. 02-0142 BLA

JESSE GNEGY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
JONES TRUCKING, INCORPORATED))	
)	
and)	
)	
WEST VIRGINIA COAL-WORKERS')	
PNEUMOCONIOSIS FUND))
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: _____
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Jack R. Turney, Oakland, Maryland, for claimant.

Robert Weinberger (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for carrier.

Before: SMITH, McGRANERY, and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (00-BLA-0210) of Administrative Law Judge Pamela Lakes Wood denying benefits on a miner's claim filed pursuant to the

¹Claimant is Jesse Gnegy, the miner, who filed his present claim for benefits on November 16, 1998. Director's Exhibit 1.

provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).² Initially, the administrative law judge noted that employer stipulated that the miner currently has fifteen years of coal mine employment, Hearing Transcript at 6-7. Decision and Order at 3 n.4, 4. Applying the regulations at 20 C.F.R. Part 718, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total respiratory disability pursuant to 20 C.F.R. §718.204(b). Decision and Order at 8-10. Accordingly, benefits were denied.

On appeal, claimant generally asserts that the medical evidence in this case is sufficient to establish he has a totally disabling respiratory impairment. Claimant's Brief at 1-2. Carrier has responded, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.³

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

²The Department of Labor amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³We affirm the administrative law judge's findings pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii) as they are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In his brief, claimant states that he has provided medical evidence that is sufficient to qualify him for an award based on a twenty-five percent pulmonary impairment attributable to his occupational pneumoconiosis because such a finding was made by the West Virginia Occupational Pneumoconiosis Board.⁴ Claimant's Brief at 1. Claimant additionally notes that he testified at the hearing that he continues to work in coal mine employment as a truck driver, but he is unsure how much longer he can continue that type of work,⁵ Hearing Transcript at 10-12, 14. Claimant's Brief at 1. Claimant, therefore, concludes that he has produced evidence which is sufficient to establish his total disability. Claimant's Brief at 2. Claimant fails to state with specificity any alleged error made by the administrative law judge in his consideration of the evidence at Section 718.204(b)(2)(iv), but merely recites the evidence contained in the record. Since claimant has failed to provide a basis upon which the Board may review the administrative law judge's weighing of the medical opinion evidence regarding total respiratory disability, we affirm the administrative law judge's Section 718.204(b)(2)(iv) finding. *See* 20 C.F.R. §718.204(b)(2)(iv); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *see also Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

Inasmuch as we affirm the administrative law judge's finding that claimant failed to establish totally respiratory disability, *see* 20 C.F.R. §718.204(b), a requisite element of entitlement under Part 718, *see Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*), we also affirm her denial of benefits.

⁴In order to establish entitlement in a living miner's claim pursuant to 20 C.F.R. Part 718, a claimant must establish that he has a **totally** disabling respiratory impairment. *See* 20 C.F.R. §718.204(b); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

⁵As the administrative law judge noted, claimant testified that currently he is working for employer, performing the same functions as he did two years ago. Hearing Transcript at 10-12, 14.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge